

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA

United States of America,)	
)	
Plaintiff,)	
)	
vs.)	File No. 1:18-mj-44
)	
Javish Javi Murshedi,)	
)	
Defendant.)	

TRANSCRIPT OF DIGITAL RECORDING OF
PRELIMINARY HEARING AND DETENTION HEARING

Taken at
United States Courthouse
Bismarck and Fargo, North Dakota
February 15, 2018

BEFORE THE HONORABLE ALICE R. SENECHAL
-- UNITED STATES DISTRICT COURT MAGISTRATE JUDGE --

APPEARANCES

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GOVERNMENT WITNESS

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EXHIBITS

<u>No.</u>	<u>Description</u>	<u>Offered</u>	<u>Received</u>
1	Photograph of Injuries	10	10
2	Photograph of Injuries	10	10
3	Photograph of Injuries	10	10

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1 (The above-entitled matter came before the Court, The
2 Honorable Alice R. Senechal, United States District Court
3 Magistrate Judge, presiding, commencing at 10:00 a.m.,
4 Thursday, February 15, 2018, in the United States Courthouse,
5 Bismarck and Fargo, North Dakota. The following proceedings
6 were had and made of record by audiovisual means and digitally
7 recorded with counsel and the defendant present.)

8 - - - - -

9 THE COURT: Today is February 15, 2018. It is
10 10:00 a.m. We're here for Case Number 1:18-mj-44. That is
11 *United States of America versus Javish Javi Murshedi*. I am
12 presiding from the courtroom in Fargo. All the other hearing
13 participants are in the courtroom in Bismarck. Jonathan
14 O'Konek is there representing the United States. Mr. Murshedi
15 is there and is represented by Michelle Monteiro of the Federal
16 Public Defender's Office. And I believe Bailey Kruger is also
17 there from the pretrial services office, is that correct?

18 MR. O'KONEK: Yes, Your Honor.

19 THE COURT: All right. We're scheduled this morning
20 for a preliminary hearing and also a hearing on the
21 government's motion for detention pending conclusion of the
22 case.

23 Well, Mr. O'Konek, you may proceed.

24 MR. O'KONEK: Yes, Your Honor, the United States
25 would call Sergeant Cody Smith.

1 THE COURT: I think it probably works best if you
2 stay at that table, maybe move to the edge of it, closer to the
3 jury box, and get a microphone in front of you. Well, the two
4 of you are going to have to share a microphone, huh?

5 MR. O'KONEK: We'll have to -- we can figure it out,
6 Your Honor.

7 THE COURT: I'm sure you can. Okay. Would you
8 please stand, and the clerk will give you an oath? Please
9 raise your right hand.

10 SERGEANT CODY SMITH,
11 having been first duly sworn, was examined and testified as
12 follows:

13 THE COURT: Thank you. Be seated, please.

14 DIRECT EXAMINATION

15 BY MR. O'KONEK:

16 Q. Now, Sergeant Smith, I just have a couple of questions
17 about your background and experience. Where are you currently
18 employed?

19 A. I am currently employed with the Three Affiliated Tribes
20 Police Department.

21 Q. And what is your duty position?

22 A. I am a canine sergeant.

23 Q. And what are your duty responsibilities?

24 A. Maintain patrol over the Fort Berthold Reservation,
25 respond to emergency calls, general traffic, and dealing with

1 narcotics on the reservation.

2 Q. Now, which portion of Fort Berthold -- it's kind of a big
3 place, but what portion do you mainly cover?

4 A. I mainly cover the Twin Buttes area, the south, I guess,
5 third of the reservation.

6 Q. And Twin Buttes -- how many people live in Twin Buttes?

7 A. Between two and three hundred, if I'm correct.

8 Q. And just to kind of jump ahead a little bit, on February
9 10th of this year, were you on duty that day?

10 A. I was on duty on that day. I ended up getting called
11 early.

12 Q. Okay. And I want to talk a little bit about how you got
13 called out. What did dispatch tell you was going on on that
14 day?

15 A. They advised me that there had been a stabbing.

16 Q. And what did you do -- or approximately what time was that
17 on that February 10th?

18 A. Just a few minutes after 1:00 p.m.

19 Q. And what did you do once you received that dispatch call?

20 A. I proceeded to get ready in my uniform and my patrol
21 vehicle and head to the address I was given.

22 Q. Okay. And where -- not necessarily going to the exact
23 address, where in Twin Buttes were you dispatched to?

24 A. The area is referred to as the CDC Trailer Court,
25 Community Development Center Trailer Court.

1 Q. Okay. And when you arrived on scene, tell us what you
2 discovered.

3 A. When I arrived on scene, one of my other offices was
4 already present. And there's two trailers that are parallel,
5 side by side, one being the suspect at the time, and the
6 victims. They're approximately 15 feet apart. And when I
7 arrived, I pulled up, and Officer Ana Alvarez was at the side
8 entrance door talking to individuals inside the house.

9 Q. Now, Officer Ana Alvarez, do you know approximately how
10 long she was on scene before you arrived?

11 A. I -- I don't know the exact amount of time. I'm guessing
12 maybe five minutes.

13 Q. Did you speak with Ana, Ms. -- or, excuse me. Did you
14 speak with Officer Alvarez about what had happened?

15 A. Yes, I did.

16 Q. And what did Officer Alvarez inform you?

17 A. She advised me that there had been a conflict between
18 Shannon Beston and Coya Walker and the suspect here, Javish
19 Murshedi, and Zac Walker.

20 Q. Okay. And I want to break, I guess, those four
21 individuals down. Now, prior to this date had you been aware
22 of any other, I guess, disagreements or conflicts between
23 Shannon Beston, Mr. Murshedi and Zachariah Walker and Coya
24 Walker?

25 A. Not between Shannon Beston and Javish Murshedi and Zac and

1 Coya walker, but other family members of the walkers.

2 Q. Had there been, I guess, disagreements between two
3 families?

4 A. Yes.

5 Q. And by "families," I mean the Bestons and the walkers.

6 A. There had been disagreements between them, yes. Most of
7 the things that I was aware of was between the Bestons,
8 Murshedi and the Starrs.

9 Q. Okay. And --

10 THE COURT: I'm sorry. I didn't catch the last name
11 you said.

12 THE WITNESS: I'm sorry. Most of the disagreements
13 that I had been made aware of was between Shannon Beston,
14 Javish Murshedi, and the Starr family.

15 Q. (MR. O'KONEK CONTINUING) And --

16 THE COURT: And the which family?

17 THE WITNESS: Starr.

18 THE COURT: Starr. Okay. Thank you.

19 Q. (MR. O'KONEK CONTINUING) And who particularly in the
20 Starr family?

21 A. There's two individuals, Alyssa Starr and Devon Starr.

22 Q. Are they related in any way to the -- to the walkers?

23 A. My understanding is they're cousins, but I'm not exactly
24 sure what the relation is.

25 Q. And I want to take you back to the time in September of

1 last year. Was there an altercation between Devon Starr and
2 the Beston family?

3 A. Yes, there was.

4 Q. And where was that at?

5 A. At the gas station in Twin Buttes, the C-Store.

6 Q. At some point during this altercation between Devon Starr
7 and -- correct me if I'm wrong, but it was a James Beston?

8 A. My understanding, that's who it was between.

9 Q. Did Mr. Murshedi appear during that confrontation?

10 A. From my understanding -- I was not involved in that
11 incident at all, but from what has been relayed to me and
12 through reports, yes.

13 Q. And what -- from the information you received from other
14 officers, what did Mr. Murshedi do during this September 2017
15 incident?

16 A. There was a fight that transpired between Devon Starr and
17 James Beston. At some point Devon had taken out a firearm.
18 The firearm was taken away from him, and at some point it's
19 been alleged that Mr. Murshedi had gotten a hold of the firearm
20 and pointed it at Devon Starr.

21 Q. Now, going back to February 10th of 2018, knowing all of
22 this information, when -- when Ms. Alvarez -- Officer Alvarez
23 tells you there had been a stabbing, did she say who had
24 stabbed whom?

25 A. She stated to me that Zac walker had been stabbed by

1 Javish Murshedi.

2 Q. Okay. And after you get this information, what do you do
3 next?

4 A. We had waited for EMTs to arrive on scene to attend to the
5 wounds on Zac, just secured the perimeter, waiting to get --
6 gather more information to determine whether it was safe or not
7 to try to make contact with the occupants in Shannon Beston's
8 residence.

9 Q. I'm showing defense counsel Government's Exhibits 1, 2 and
10 3. These are photographs, I believe, that Ana -- Officer Ana
11 Alvarez had taken of Zachariah walker's injuries?

12 A. Yes.

13 Q. Now I want you to look at all three of those exhibits.
14 Are those exhibits a fair and accurate depiction of the
15 injuries that Ms. Alvarez -- or Officer Alvarez had described
16 to you belonging to Mr. walker?

17 A. Yes.

18 MR. O'KONEK: At this time, Your Honor, I'd request
19 to admit Government's Exhibits 1, 2 and 3.

20 MS. MONTEIRO: No objection.

21 THE COURT: Thank you. Exhibits 1, 2 and 3 are
22 received. And I'll just note that I received them via e-mail
23 prior to the hearing, and I think one of them was also attached
24 to the Complaint, so those three exhibits are received.

25 MR. O'KONEK: Yes, Your Honor.

1 Q. (MR. O'KONEK CONTINUING) Now, Government's Exhibit 1,
2 what's depicted in that photograph?

3 A. I believe that is going to be Zac walker's left arm with a
4 large cut across it.

5 Q. And Government's Exhibit 2?

6 A. That will be Zac walker's left hand with what appeared to
7 be either cuts or scrapes that are bleeding on his fingertips.

8 Q. And then Government's Exhibit 3, what's depicted in that
9 photograph?

10 A. Again, Zac walker's left hand. It looks like actually
11 pieces of skin missing from the fingertips.

12 Q. Okay. Now, at some point did you speak with Mr. Zachariah
13 walker?

14 A. That day, just very briefly, and it was just in regard --
15 after the EMTs had actually attended to him, we wanted to get
16 everybody out of the residence before trying to make contact
17 with the Beston residence. And he had stated that he did not
18 want to exit out the door that was facing Bestons' house, so we
19 actually had to remove a bunch of belongings that were in front
20 of the back door so we could get him out the back door.

21 Q. And why didn't Mr. Zachariah walker want to leave the
22 house?

23 A. He stated he was afraid for his life. He stated that
24 being that he had just been stabbed, he was worried that if
25 they were going to do that, what would stop them from shooting.

1 Q. Now I want to back up a little bit. You said "they" had
2 -- somebody had stabbed him. Did Mr. Zachariah walker state
3 who had stabbed him?

4 A. He had stated that it was Javish Murshedi.

5 Q. And at some point you had said earlier -- did anybody else
6 speak with Mr. walker before you?

7 A. Yes, Officer Alvarez did.

8 Q. And did she relay to you the information or have you read
9 a report of the information that Mr. Zachariah walker told her
10 about the incident?

11 A. Yes.

12 Q. And what did Zachariah walker tell Officer Alvarez about
13 what had happened that day?

14 A. That he had come home from work for lunch. I'm sorry,
15 that Mr. walker had come home from work for lunch, and upon
16 arriving to the residence, Mr. Murshedi was sitting outside and
17 in his words he was mean-mugging him as he come by, and they
18 started in a verbal altercation and then proceeded to get into
19 a fight after more family members walked outside.

20 Q. And who were those family members?

21 A. His mother, Coya walker; his father, Mickey walker,
22 Michael, but he goes by Mickey; and his girlfriend. I don't
23 know what her name is. I've never spoke with her at all. And
24 then he also stated that that Shannon Beston had come outside,
25 and then shortly after James Beston had arrived.

1 Q. And so just kind of, I guess, set the -- the stage here as
2 to what had happened. The trailer park that you talked about,
3 how close are the Beston family located near the walker family?

4 A. They -- like I said, it's -- the two trailers both run
5 north and south. They're parallel to each other, approximately
6 15 feet apart.

7 Q. And so on one side you have the Beston family, James
8 Beston, Shannon Beston and Mr. Murshedi, is that right?

9 A. It would be Shannon Beston and Mr. Murshedi, but James
10 does not reside at that residence.

11 Q. And so at this time -- I apologize -- it was Mr. Murshedi
12 and Shannon Beston on one side?

13 A. Yes.

14 Q. And then on the other side of the trailer park -- or next
15 to it is Coya walker, Zachariah walker and Michael, Mickey,
16 walker.

17 A. Correct.

18 Q. So at some point, the information that's been conveyed to
19 you, what happened next after these individuals are getting
20 into an argument?

21 A. They were -- would have been on the north side of the
22 trailers near the car that was parked there. And Mr. Murshedi
23 and Zac walker got into a fistfight, is my understanding. And
24 at that time Shannon Beston and Coya walker then also got into
25 a fistfight. And while the fight was ensuing, Mr. Murshedi

1 eventually removed a large knife, from the way they described
2 it, from like the swell of his back.

3 Q. And who's "they" that described it?

4 A. Coya walker, Zac walker, and Mickey walker.

5 Q. Okay. So Coya, Zac and Michael, Mickey walker, all
6 described that Mr. Murshedi grabbed a knife from the side of
7 his hip.

8 A. Yes.

9 Q. Did they describe what it looked like?

10 A. They described it as like a large hunting knife or a mini
11 machete.

12 Q. Do you know what (inaudible) machete?

13 A. well, they were describing it as approximately 14 to 18
14 inches in length, overall length. They said it was black in
15 color and had a white stripe around the handle at some point.

16 Q. And so when you're talking with Zachariah walker -- excuse
17 me, that Officer Alvarez was talking to Zachariah walker, did
18 Mr. walker describe what Mr. Murshedi was doing with the knife?

19 A. Initially when he took it out, he pulled it out in a
20 swinging fashion to swing it at him, and he said he raised up
21 his arm to block it.

22 Q. who raised up their arm?

23 A. Zac did, Zac walker.

24 Q. So just to be clear, Mr. Murshedi swings a knife at
25 Mr. walker, and Mr. walker blocks it with his arm?

1 A. Yes.

2 Q. And then what happened? what did Mr. Walker say happened
3 after that?

4 A. He stated that he jumped back after he was initially hit.
5 He didn't realize at first that he was struck by a sharp
6 object. He said that Mr. Murshedi then started to swing this
7 object at him again, being the knife, and he was able to dodge
8 it and then took off running.

9 Q. And after Mr. Walker takes off running, what does Mr.
10 Murshedi do?

11 A. Chased him.

12 Q. And how is he chasing him?

13 A. Running directly behind him, in pursuit of him.

14 Q. Does he still have the knife at this point?

15 A. Yes.

16 Q. And I want to talk a little bit about what had happened
17 between Shannon Beston and Coya Walker. What -- what was
18 described as the incident involving those two during the time
19 that Mr. Murshedi is chasing Mr. Walker with the knife?

20 A. It was described to me through Officer Alvarez as -- the
21 statements portrayed to Officer Alvarez was that Shannon Beston
22 just assaulted Coya Walker, stating that she just went up to
23 her and started punching her in the face. Statements by Coya
24 was that Shannon had grabbed a hold of her jacket and was
25 giving her uppercuts to the face.

1 Q. Did Coya walker have any injuries to her?

2 A. Yes, she did.

3 Q. And what were those injuries?

4 A. Severe bruising around her face.

5 Q. Okay. And kind of going back a little bit, did Coya see
6 Mr. Murshedi do anything to Mr. walker?

7 A. From her statements, yes.

8 Q. What did she see?

9 A. She saw Mr. Murshedi take out a knife and swing it at Zac
10 walker and striking him in the arm.

11 Q. And I think you've stated earlier, but Ms. Coya walker is
12 the mother of Zachariah walker.

13 A. Yes.

14 Q. All right. And at some point -- when you arrived on
15 scene, was Mr. Murshedi there?

16 A. No, he was not.

17 Q. Let's talk a little bit about what you did next. So you
18 get this information. You speak with Mr. Zachariah walker.
19 what else do you do?

20 A. After speaking with just Zac, like I said, briefly, we got
21 him out of the residence. I actually got the car keys from him
22 because he'd refused to go to the -- it would be the west side
23 of the house, which was directly in between the two residents,
24 so I drove the vehicle down to the east side of the house so
25 they could all get in the vehicle; "they" being Zac walker,

1 Coya walker, Mickey walker, and then Zac's girlfriend, to head
2 to the hospital. Upon them leaving the scene and nobody being
3 in their residence anymore, myself and one of the deputies --
4 there were three deputies that arrived on scene.

5 Q. Deputies from where?

6 A. Dunn County. I do not know what their names were, but we
7 then made contact at the Shannon Beston residence.

8 Q. Okay. And before I go too far, now, the area where this
9 trailer park is located on -- in Twin Buttes, is that on the --
10 within the exterior boundaries of the Fort Berthold Indian
11 Reservation?

12 A. Yes, it is.

13 Q. And to your knowledge, is Zachariah walker an Indian
14 person?

15 A. Yes, he is.

16 Q. Enrolled at the Fort Belknap in Montana?

17 A. Yes.

18 Q. To your knowledge, is Mr. Murshedi a Indian person?

19 A. No.

20 Q. Is he enrolled in any federally-recognized tribes?

21 A. Not that I'm aware of.

22 Q. So after the walker family leaves, you said you approached
23 the Beston family.

24 A. Yes.

25 Q. Specifically Shannon Beston?

1 A. Yes.

2 Q. Tell -- take us through what happened.

3 A. I approached the -- it would be the west side door, which
4 is the front entrance of the residence. I knocked on the door.
5 Shannon did answer the door. I'd asked her to step outside,
6 and she had grabbed a coat and then came outside. And I asked
7 her if Javish Murshedi was there, and she stated, no, he was
8 not.

9 Q. Did she tell you anything else about what started this
10 altercation?

11 A. At that moment, no.

12 Q. At any point did she?

13 A. Yes, she did. She had stated that the walker family was
14 always, in her words, starting shit. They would be very loud
15 at nighttime, would be pounding on the side of their trailer.

16 Q. Driving on her property?

17 A. She did at one point state that they had driven on the
18 property, yes.

19 Q. And did she describe what had happened during the
20 altercation?

21 A. At that moment she didn't really describe much at all. It
22 was much later on she had described it to Detective Bowen.

23 Q. And to your knowledge, do you know what she had said? If
24 you don't know, that's okay.

25 A. I don't know offhand, if I can look through --

1 Q. We'll go into that in a bit. Kind of going back in time,
2 you were talking to her. Did you end up looking for Mr.
3 Murshedi in Shannon Beston's residence?

4 A. Yes, I did.

5 Q. And why did you do that?

6 A. Given the circumstances and the nature, and everything, of
7 the assault that had taken place with the injuries, it was in
8 everybody's best interest to make sure we locate all parties
9 for two reasons; one, safety of the alleged victim and safety
10 of the alleged suspects.

11 Q. And so did you -- I guess to qualify, did you kind of do a
12 protective sweep of the house?

13 A. Yes, we did.

14 Q. And what did you notice as you were going inside the
15 house?

16 A. There were only two other occupants that were in the house
17 at the time -- well, I'm sorry, three other occupants. When
18 Shannon came out of the house, I'd noticed that her brother,
19 James Beston, was in the living room, along with -- at the time
20 I did not know the male's name, and then a young teenage boy.
21 Those were the only individuals that we had located in the
22 house.

23 Q. And did you find Mr. Murshedi in the residence?

24 A. No, I did not.

25 Q. Did you find anything else of note to this case in the

1 residence?

2 A. Yes. The deputies had advised me that they had found a
3 large knife sheath in the master bedroom.

4 Q. And at that point, after you've kind of done a protective
5 sweep, do you guys leave the house?

6 A. Yes, we did.

7 Q. The -- I should call it the residence. I apologize.

8 A. Yes.

9 Q. Did -- at that point did you ultimately -- or you or
10 somebody from the police department get consent to go into the
11 home?

12 A. Yes, we did.

13 Q. At first -- I just want to clarify -- did Ms. Beston give
14 consent?

15 A. Initially, no, she did not. When we were escorting her
16 back to the patrol vehicle, she said we could not go in the
17 house.

18 Q. And at some point later did Detective Bowen of the Three
19 Affiliated Tribes ask her again?

20 A. Yes.

21 Q. And what did she say?

22 A. She gave him verbal consent, and then I advised him to get
23 a written consent form.

24 Q. And, now, at this point you still hadn't located Mr.
25 Murshedi, is that right?

1 A. Correct.

2 Q. Where do you find Mr. Murshedi?

3 A. Actually, Shannon's mother returned back to the residence
4 and brought him there.

5 Q. Okay. And so what happens after the -- Mr. Murshedi is
6 brought back to the residence?

7 A. Myself and Officer Alvarez walked out the residence and
8 went to her vehicle, which was a pickup truck, and Mr. Murshedi
9 was in the backseat.

10 Q. Who were -- where -- where was Mr. Murshedi found?

11 A. She stated that he was found approximately a mile east --
12 just to the east side of Twin Buttes, walking down a tree row.

13 Q. And so did she say why she had brought Mr. Murshedi back?

14 A. Yes, her statement was that after she picked him up, she
15 told him that he was guilty and needed to turn himself in.

16 Q. And so Mr. Murshedi is brought back to you. Do you speak
17 with him at all?

18 A. I advised him that I was detaining him at that time. I
19 placed him in the back of my patrol vehicle and read him
20 Miranda and advised him that Detective Bowen would be coming
21 out to speak with him shortly.

22 Q. Did Detective Bowen speak with Mr. Murshedi?

23 A. Yes, he did.

24 Q. And did you also speak with him?

25 A. I spoke with him about -- prior to transport.

1 Q. At some point did you call -- you -- did somebody from
2 your office call -- contact the U.S. Attorney's Office?

3 A. Yes.

4 Q. And did you get permission to arrest Mr. Murshedi for
5 assault with a dangerous weapon?

6 A. Yes.

7 Q. And the reason I ask you that is, did you communicate that
8 to Mr. Murshedi?

9 A. Yes, I did.

10 Q. What happened shortly before -- after you communicated
11 that to Mr. Murshedi?

12 A. Just prior to advising him of -- that I was placing him
13 under arrest for the offenses, he was allowed to speak with
14 Shannon's mother, which was Willa Incognito. While he was
15 talking with Willa, he became very emotional, very upset over
16 the whole incident, and he started making statements and
17 comments of, if they want --

18 Q. If you need to --

19 A. May I look, because I believe that's quoted in here?
20 Well, Mr. Murshedi, he stated, "They want problems, I'm going
21 to bring them some fucking problems, man. I'm going to go to
22 jail for a reason now. Don't let me get a hold of them. Don't
23 let me get a hold of them mother fuckers, man."

24 Q. At any point did Mr. Murshedi talk to you about what
25 happened that day?

1 A. Yes, he did.

2 Q. What did he say?

3 A. He advised that himself and Zac Walker had gotten into a
4 tussle towards the north of the trailers, between the car and
5 the propane tank. He stated that as they were fighting, that
6 Zac then ran away from him and took off on him, and that he
7 kind of pursued him.

8 Q. Were you -- did you clarify what he meant by "kind of
9 pursued him"?

10 A. Going after him, chasing him.

11 Q. Did he mention whether he had a knife or anything in his
12 hands?

13 A. He did not.

14 Q. Did he deny having a knife?

15 A. I -- to be honest, I don't know if I ever asked him if he
16 had one or not.

17 Q. Did you ever find a knife?

18 A. No, we were not able to locate one.

19 Q. Well, what steps did you take to try to find one?

20 A. The following day myself and Detective Bowen had gone out
21 and went through the area, the field and everything where Mr.
22 Murshedi stated that he had been walking and left. We were not
23 able to find any tracks out there through the area where he
24 said that he was walking and were not able to locate a knife
25 anywhere. The residence had also been searched, and we were

1 not able to find it in the residence.

2 Q. The last question I really have for you is, at some point
3 did you learn other -- more information about what potentially
4 happened to the knife?

5 A. No.

6 Q. Was there a point where you advised whether -- what -- how
7 Mr. Murshedi used the knife and might have lost it?

8 A. While he was struggling with Zac Walker, Zac had stated
9 that when he was running away from Mr. Murshedi, he had tripped
10 over a mound of dirt and fell on the ground. He said he -- in
11 his words, he stated he rolled over on his back, expecting
12 another attack to come and that Mr. Murshedi was chasing behind
13 him with the knife raised above his head, and as he brought his
14 arm back, it slipped off his hand. He did state that he was
15 able to recover the knife and kept coming after him, but with
16 him trying to pick up the knife, he was able to get away from
17 him.

18 Q. And is that in any of the reports, or will that be in a
19 supplement?

20 A. That is in a supplemental.

21 Q. And the last question I guess I have -- I apologize. I
22 said that before, but did Mr. Zachariah Walker explain what he
23 felt -- what he thought would happen to him during this
24 incident?

25 A. Yes, he had stated he thought he was going to be killed.

1 MR. O'KONEK: Those are the only questions I have,
2 Your Honor.

3 THE COURT: Thank you. Ms. Monteiro, you may
4 cross-examine this witness.

5 MS. MONTEIRO: Thank you.

6 CROSS-EXAMINATION

7 BY MS. MONTEIRO:

8 Q. So it seems as though there's a family feud going on here,
9 is that right?

10 A. Yes, my understanding, it's been roughly one year in the
11 process.

12 Q. Okay. So for the last year there's been feuds going on
13 between these two families?

14 A. Yes.

15 Q. So we have on one side the walker family, and they're
16 related to some -- you know, the Starr family, correct?

17 A. Correct.

18 Q. So I guess I'll call them the walker-Starr family. And
19 then on the other side we have the Beston family, correct?

20 A. Correct.

21 Q. And then Mr. Murshedi here, he is, I guess, a member of
22 that family because this Shannon Beston is his wife, correct?

23 A. Correct. I was not aware that they're married, but --

24 Q. They're in a relationship, though.

25 A. Yes.

1 Q. And so there was a previous incident then that you
2 mentioned with the Starr family and the Beston family where a
3 gun was pulled, is that correct?

4 A. Correct.

5 Q. And this Devon Starr pulled a gun on James Beston?

6 A. That is my understanding.

7 Q. Okay. And then Mr. Murshedi was there, and he was able to
8 wrestle the gun away from Mr. Starr? Is that what happened?

9 A. I don't know who it was that wrestled it away from him. I
10 was just told that at some point in time Mr. Murshedi did have
11 possession of the firearm.

12 Q. Okay. But this Mr. Starr was the one that pulled out the
13 gun during the altercation.

14 A. Correct.

15 Q. And then are there some restraining orders going on
16 between these two families?

17 A. Between the Bestons and the Starrs.

18 Q. Okay. So who's got restraining orders in the Starr -- or
19 in the Beston family against the Starrs?

20 A. My understanding is that James Beston and Shannon Beston
21 have restraining orders against Devon Starr and Alyssa Starr.
22 I'm not positive that there's other individuals that are
23 incorporated in that or not.

24 Q. So Devon Starr and Alyssa Starr are ordered then to stay
25 away from Shannon and James Beston.

1 A. Correct.

2 Q. So they obviously aren't allowed to go on Shannon Beston's
3 property, correct?

4 A. Correct.

5 Q. And Mr. Murshedi lives there with Shannon Beston?

6 A. Yes.

7 Q. But you're not aware whether the walkers, who are related
8 to the Starrs -- do they have any -- are there any restraining
9 orders against them that you're aware of?

10 A. Not that I'm aware of.

11 Q. Okay. So I think what I heard you say is that Zachariah
12 walker said that he was -- I don't know if he was driving by,
13 but he claimed that Mr. Murshedi was mean-mugging him?

14 A. Yes.

15 Q. So what's that, giving him a dirty look?

16 A. Yes.

17 Q. So then this -- because supposedly Mr. Murshedi was giving
18 him a dirty look, that Zachariah then went over and confronted
19 Mr. Murshedi? Is that what happened?

20 A. No, it's -- my understanding was that Mr. Murshedi had
21 then stated to Zac -- asking him if everything was all right of
22 some sort, and Zac said, "Everything is fine. Is everything
23 all right?" And then they just continued to have a verbal
24 altercation.

25 Q. Okay. So then did Zac come to where Mr. Murshedi was?

1 A. That, I don't have an exact clarification on.

2 Q. Okay. And did this altercation start on Mr. Murshedi's
3 property?

4 A. My understanding, it would have started on the walker
5 residence.

6 Q. Okay. Now, when you -- when you talked to Mr. Murshedi,
7 you said he was very upset and emotional because he was going
8 to go to jail and be charged?

9 A. Yes.

10 Q. Was he crying and upset, or what?

11 A. On and off he had been, yes.

12 Q. Okay. Now, he also told you when you talked with him that
13 Mr. Walker had told -- during this altercation had told another
14 individual to get a firearm.

15 A. Yes.

16 Q. And Mr. Murshedi like took off and he was scared because
17 he thought these people were going to go get a gun.

18 A. Yes.

19 Q. And there obviously had been a previous incident where
20 this -- these people, the family, Starr-Walker family had
21 pulled a gun on Mr. Murshedi and the Beston family.

22 A. The Starr family, yes.

23 Q. Okay. But you agree, though, that Starrs and the Walkers
24 are all one of -- part of one family.

25 A. They are related, yes.

1 Q. And they're together feuding with the Bestons and Mr.
2 Murshedi.

3 A. At separate times, separate incidents, yes.

4 Q. So it seems as though to me that after this altercation
5 started between Mr. Murshedi and Zachariah walker -- did you
6 say that other family members that came then and got involved
7 in this situation?

8 A. Yes.

9 Q. Okay. So Shannon started fighting physically with Coya
10 walker, the mother?

11 A. Yes.

12 Q. And Shannon is three-months pregnant, is that correct?

13 A. I'm under the impression that she is pregnant. I do not
14 know how far along.

15 Q. So we have Mr. Murshedi and Shannon. Was there anybody
16 else from the Beston-Murshedi family that was involved in this
17 altercation?

18 A. They were present. James Beston was present. My
19 understanding from what -- everything that had been relayed to
20 me, he was not involved in the altercation, anything more than
21 just verbally.

22 Q. Okay. And what members besides Zachariah and Coya walker
23 were part of this altercation?

24 A. Involved in the actual conflict was just those two.
25 Others were present, being Mickey walker and then Zac's

1 girlfriend.

2 Q. Okay. So we have two other people that -- from the
3 walker-Starr family.

4 A. That were present, yes.

5 Q. Okay. But the only altercations that occurred were
6 between Mr. Murshedi and this Zac and then Shannon and Coya.

7 A. Correct.

8 Q. And did -- did these other two people that were present
9 from the walker family give any type of statement to the police
10 about what had happened?

11 A. They -- I do believe they gave statements to Officer
12 Alvarez.

13 Q. Okay. And what about James Beston? Did he tell law
14 enforcement what happened?

15 A. Yes, he had had an interview with Detective Bowen.

16 Q. And do you know what he told them happened?

17 A. He had stated that there was a confrontation between them.
18 He had stated that he was trying to be an intermediary and
19 tried to calm everybody down. And between all of the different
20 statements, the only discrepancy between everybody's statements
21 was pretty much just the involvement of the knife.

22 Q. So the people on the Beston side didn't mention anything
23 about a knife, is that --

24 A. Correct.

25 Q. But then on the walker side, they were claiming there was

1 a knife.

2 A. Correct.

3 Q. And then you searched everywhere where Mr. Murshedi had
4 been, and you didn't find a knife anywhere.

5 A. Correct.

6 Q. Okay. So you had mentioned that this Ms. Shannon Beston
7 has got a mother in the area, is that correct?

8 A. Yes.

9 Q. Where does the mother live in relation to these
10 walker-Starr people, you know, if you know?

11 A. She lives in the eastern side of town. She actually would
12 live right near where she had stated that she found Mr.
13 Murshedi walking.

14 Q. Okay. So she doesn't live right next-door to the walkers
15 and the Starrs.

16 A. No, they're -- they're over a mile apart.

17 Q. And then are you aware that there's a grandmother out
18 there of Shannon's that's living somewhere in the community?

19 A. Yes, a few more miles east of town.

20 Q. Okay. So the grandmother also doesn't live anywhere in
21 the vicinity of the walker-Starr family.

22 A. She lives -- I guess I should restate that. The mother
23 does live fairly close to one of the Starr family members,
24 approximately a quarter mile away, same as the grandmother.
25 She lives near some of the Starr residences.

1 Q. But it seems like the mother and the grandmother's house,
2 though, is not directly next-door to any of these people, like
3 kind of --

4 A. Where the incident took place, no.

5 Q. Okay. And Mr. Murshedi informed you that this gentleman
6 had hit him with a bat, is that correct?

7 A. No, he actually never advised me that he was struck with a
8 bat. He had advised at some point that Coya walker had a bat,
9 but nobody had ever said that she hit anyone with it.

10 Q. Okay. So there's more to the story from, I guess, other
11 people talking to law enforcement because now we have something
12 about a bat coming into it, correct?

13 A. That was mentioned the next day as well too.

14 Q. Were there any other weapons mentioned, or --

15 A. No.

16 Q. And was there anything else mentioned about somebody
17 telling another -- one of the walkers telling another one to go
18 get a gun?

19 A. Yeah, that was mentioned. That had already been
20 clarified.

21 Q. And did that happen?

22 A. Was the gun retrieved?

23 Q. No, did --

24 A. No.

25 Q. Did the -- Zachariah walker tell somebody to go get a gun?

1 A. According to Mr. Murshedi, yes.

2 Q. Okay. And did any other witness report that that had
3 happened?

4 A. I'm not sure if in the other interviews, that that was
5 mentioned or not.

6 Q. Did you search the walker home to see if there was -- if
7 they did have a gun?

8 A. No, we have not had a chance to.

9 Q. Is that something you intend to do, or --

10 A. Yes, that is something that the detectives are looking
11 into.

12 Q. Okay. Are -- are they prohibited from possessing
13 firearms, to your knowledge?

14 A. Yes, they are.

15 Q. Does one -- Devon Starr, that had pulled out a gun during
16 this other incident, is he prohibited from possessing a
17 firearm?

18 A. No, he's not.

19 Q. Okay. So he had a legal firearm.

20 A. Yes.

21 Q. But these other people are prohibited.

22 A. Correct.

23 MS. MONTEIRO: Okay. Nothing further. Thank you,
24 sir.

25 THE COURT: Thank you. Mr. O'Konek, any redirect?

1 MR. O'KONEK: Just -- just briefly for clarification,
2 Your Honor.

3 REDIRECT EXAMINATION

4 BY MR. O'KONEK:

5 Q. Now, Sergeant Smith, were any members of the Starr family
6 present during this incident on February 10th?

7 A. No, they were not.

8 THE DEFENDANT: They drove by. Tell them. You saw
9 them drive by twice.

10 MS. MONTEIRO: Be quiet.

11 THE DEFENDANT: Tell them the truth.

12 THE COURT: Excuse me.

13 MS. MONTEIRO: It's not going to be helpful, okay?

14 THE COURT: Excuse me.

15 THE DEFENDANT: (Inaudible due to the microphone
16 crackling.)

17 THE COURT: Mr. Murshedi?

18 THE DEFENDANT: (Inaudible due to the microphone
19 crackling.)

20 MS. MONTEIRO: It's not helping.

21 THE COURT: Mr. Murshedi, first of all, I'm not able
22 to hear anything that you've said because of the connection,
23 but it is not appropriate to you -- for you to speak right now.
24 This is the time when Sergeant Smith is testifying. You have
25 had a chance to cross-examine him through your lawyer, and now

1 is the time for Mr. O'Konek to ask some questions on redirect.

2 And just because of the audio connection issues that
3 we have here, Ms. Monteiro, can we move the microphone away
4 from Mr. Murshedi so it doesn't pick up -- pick up unless he's
5 testifying or speaking?

6 MS. MONTEIRO: Yes.

7 THE COURT: Thank you. Okay. Mr. O'Konek, do you
8 have redirect?

9 MR. O'KONEK: Yes, Your Honor.

10 Q. (MR. O'KONEK CONTINUING) Now, going back to who was all
11 present, I guess I'll just ask the question, the Starr family
12 was not present and in a physical altercation, is that right?

13 A. Correct, they were not present during the physical
14 altercation at all.

15 Q. Now, did you see any member of the Starr family when you
16 arrived?

17 A. When I was speaking with Mr. Murshedi just prior to
18 transport, one of the Starr family members did drive by.

19 Q. So this was how long after the incident?

20 A. After the incident, it would have been several hours.

21 Q. Okay. So just to clarify a time when we have the Bestons
22 and the walkers getting into an altercation, no member of the
23 Starr family was present.

24 A. Correct.

25 MR. O'KONEK: That -- that was the only question I

1 had, Your Honor.

2 THE COURT: All right.

3 MS. MONTEIRO: Nothing further, Your Honor.

4 THE COURT: Thank you, Sergeant Smith.

5 Mr. O'Konek, is there additional evidence that you
6 wish to offer?

7 MR. O'KONEK: No, Your Honor. The government rests.

8 THE COURT: Ms. Monteiro, do you wish to offer
9 evidence?

10 MS. MONTEIRO: No, Your Honor.

11 THE COURT: All right. And I guess we should
12 clarify, do we want to address both the preliminary hearing
13 question and the pretrial detention question in argument at the
14 same time, or do you want to look at those separately?

15 MR. O'KONEK: I believe we can take them up at the
16 same time, if that's amenable to the defense, Your Honor.

17 MS. MONTEIRO: Yes.

18 THE COURT: Okay. Then I will ask Ms. Kruger -- I've
19 received your written report. Other than that written report,
20 do you have anything else that you would wish to bring to the
21 Court's attention?

22 MS. KRUGER: No, Your Honor.

23 THE COURT: And, counsel, have you both had an
24 opportunity to review the pretrial services report?

25 MR. O'KONEK: Yes, Your Honor.

1 MS. MONTEIRO: Yes, Your Honor.

2 THE COURT: All right. Then, Mr. O'Konek, you may
3 proceed with argument both as to the probable cause question
4 and the detention question.

5 MR. O'KONEK: Yes, Your Honor. Regarding first the
6 preliminary hearing, the probable cause inquiry for the four
7 elements -- or, excuse me, the six elements for assault with a
8 dangerous weapon, on the 10th of February, this last Saturday,
9 of 2018, according to Mister -- or Sergeant Cody Smith, excuse
10 me, and the photographs that were presented; one, the defendant
11 did assault another person, Zachariah Walker. That is the
12 testimony of Sergeant Smith, talking about what Zachariah
13 Walker talked about, how he had been stabbed by a knife from
14 Mr. Murshedi.

15 Coya Walker, his mother, saying that Mr. Murshedi had
16 chased Mr. Zachariah Walker with a -- with a machete, and also
17 the injuries that -- you can look at the injuries. It appears
18 that Mr. Zachariah Walker has a cut to his left -- right above
19 -- right near the elbow, to his forearm that's pretty deep that
20 looks like it's caused by a large knife, and also has defensive
21 wounds on his fingers, which also appear to have been caused by
22 a -- by a knife.

23 A knife is a dangerous weapon. Although one was not
24 found in this case, the wounds themselves speak for that being
25 a knife. They found a -- law enforcement found a sheath that

1 would have carried a large knife, and additionally the
2 witnesses, two of them saw a knife wielded by Mr. Murshedi.

3 Three, the defendant intended to cause bodily harm.
4 The ongoing confrontation that's been happening for at least a
5 year between the Beston family, to which Mr. Murshedi is
6 married into, and the Walker family demonstrate that there's
7 potential motivation. Understanding there might be an argument
8 for self-defense, that's not the appropriate forum here. It is
9 probable cause. And according to everybody, to include Mr.
10 Murshedi, there was a -- there was a scuffle, and it appears
11 from all of the testimony that Mr. Murshedi intended to cause
12 bodily harm, and, in fact, did cause bodily harm to Zachariah
13 Walker.

14 And in terms of the -- Mr. Murshedi is a non-Indian
15 person. He's not enrolled with a federally-recognized tribe,
16 and Mr. Walker is. He's an Indian person out of Fort Belknap,
17 and the area of Twins Buttes is part of the Fort Berthold
18 Indian Reservation, so the United States has demonstrated
19 probable cause in this case for assault with a dangerous
20 weapon.

21 In terms of detention, we'd request detention for Mr.
22 Murshedi for five main reasons. His history and
23 characteristics show he has a lengthy criminal history that
24 involves both violent and drug offenses. He's been convicted
25 of homicide, possession with intent to deliver cocaine, battery

1 offenses, and trafficking cannabis. And just looking through
2 his criminal history, it appears Mr. Murshedi has been in and
3 out of prison most of his adult life. Based upon my
4 calculation, Mr. Murshedi would be a career offender under the
5 guidelines.

6 In terms of the third point, he's a danger to the
7 community, and I think that's been demonstrated by clear and
8 convincing evidence, that he has violent tendencies towards the
9 walker family, to specifically include Mr. Zachariah walker.
10 And he didn't cause -- he did cause harm to him, and his
11 outbursts after the fact, saying if he -- basically he -- they
12 better watch out if he gets out demonstrates why he needs to be
13 detained for not just the safety of Mr. walker, but the entire
14 Twin Buttes community.

15 He also may attempt to intimidate Mr. walker and Coya
16 walker if he were released, and that's based upon the
17 statements that he made.

18 And, lastly, the weight of the evidence is strong.
19 Although one could argue for a self-defense argument, the
20 witnesses place Mr. Murshedi with a large knife or machete in
21 his hand. Along with Mr. Murshedi's criminal history, it shows
22 that this was not a mistake and this was not self-defense, and
23 we'd argue that all of those five reasons weigh in favor of
24 detention, Your Honor.

25 THE COURT: Thank you. Ms. Monteiro.

1 MS. MONTEIRO: Your Honor, I would defer to the Court
2 on the issue of probable cause.

3 But I would like to make an argument that Mr.
4 Murshedi -- Murshedi should be released at this time and he
5 should not be detained. I think there's two things going on
6 here. First of all, he's not a danger to the community if he
7 would be released, and second of all, he's not a risk to not --
8 to not appear in court.

9 Regarding his past record, I think the last
10 assaultive-type behavior I see here is from 2007. He's got a
11 misdemeanor battery conviction, so that's, you know, over ten
12 years old that any type of assaultive conduct has happened with
13 Mr. Murshedi.

14 I -- you know, obviously there's ongoing disputes
15 going on between these two groups of people to the point that
16 people are pulling guns on each other. The other side is
17 pulling guns on Mr. Murshedi's family and Mr. Murshedi here.

18 In this particular incident we've got allegations of
19 a knife that's never found. We have allegations that the other
20 side had a bat, and we have allegations that somebody was going
21 to get a gun, so it seems like this is a very chaotic
22 situation. At this point we can't really determine who the
23 aggressor was.

24 And there appear to be legitimate, you know,
25 self-defense arguments, and there appear to be even some

1 dispute as to whether a knife was even involved in this
2 situation, at least, you know, on Mr. Murshedi's part.

3 So I would suggest that perhaps if the Court would be
4 willing to release Mr. Murshedi, that he would go not -- I
5 realize it's probably difficult for him to go back to that
6 trailer, but perhaps he could go stay with the grandmother or
7 the mother, who don't live directly next-door to these people,
8 and that would kind of alleviate some of the tension going on
9 between these people and, you know, protect the community from
10 any further type of altercations going on with these people.

11 As far as his risk to not reappear, he has got ties
12 to the community. He -- his significant other -- he's married
13 like in a common-law Native American way to this woman, this
14 Shannon Beston, and she's three months pregnant. He's got good
15 relationships, he tells me, with both her grandmother and her
16 mother.

17 So he -- he's been in the community for about a year.
18 Since August of 2016 he's been up here in North Dakota. He
19 came to work, he said. I don't see that he has a history of
20 failure to appears, so I think that he should not be detained.

21 I think that he is not a danger. And any type of,
22 you know, risk to the community or risk of further, you know,
23 altercations here could be mitigated by Mr. Murshedi staying
24 with the grandmother or the mother.

25 And I don't think we have to worry that Mr. Murshedi

1 will not appear because he has a wife that's pregnant, and then
2 he's not going to run away from that situation, that family.
3 So that's what I'd ask the Court to do, is to release him under
4 the conditions that I laid out.

5 THE COURT: Thank you. Mr. O'Konek, is there
6 anything you wanted to add in rebuttal?

7 MR. O'KONEK: No, Your Honor.

8 THE COURT: All right. I do find probable cause. I
9 find that the evidence establishes each of the elements of the
10 offense which is charged in the Complaint.

11 And at this time I'm going to grant the government's
12 motion for detention pending conclusion of the case for the
13 reasons outlined in Ms. Kruger's report. And I will be issuing
14 a written order to that effect.

15 Mr. O'Konek, is there anything else to be addressed
16 this morning?

17 MR. O'KONEK: No, Your Honor.

18 THE COURT: Ms. Monteiro, anything else?

19 MS. MONTEIRO: No, Your Honor.

20 THE COURT: All right. Thank you, all. We're
21 adjourned.

22 (Proceedings concluded at 10:46 a.m., the same day.)

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